



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,782	05/27/2004	Douglas Ray Sparks	IFP-24	3781
27127 7590 01/03/2007 HARTMAN & HARTMAN, P.C. 552 EAST 700 NORTH VALPARAISO, IN 46383			EXAMINER HUH, BENJAMIN	
			ART UNIT	PAPER NUMBER
			3767	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/03/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/709,782

Applicant(s)

SPARKS ET AL.

Examiner

Benjamin Huh

Art Unit

3767

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 39-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-12, 39-45 and 47-58 is/are rejected.
- 7) ☒ Claim(s) 8 and 46 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Group I which is claims 1-12 and 39-58 in the reply filed on 10/05/06 is acknowledged.

Specification

The disclosure is objected to because of the following informalities: It is the Examiner's position that Applicant has evoked sixth paragraph, mean-plus-function language to define Applicant's invention in the claims. Therefore the Examiner requires the Applicant to amend the specification and/or point out the location of the support for the means-plus-function language pursuant to 37 CFR 1.75(d) and MPEP 608.01(o) to explicitly state, with reference to the terms and phrases of the claim element, what structure, materials, and acts perform the function recited in the claim element. Please note that the MPEP clearly states, "Even if the disclosure implicitly sets forth the structure, materials, or acts corresponding to the means-(or step-) plus-function claim element in compliance with 35 U.S.C. 112, first and second paragraphs, the PTO may still require the applicant to amend the specification pursuant to 37 CFR 1.75(d) and MPEP 608.01(o) ...". (Also see MPEP 2181 (Rev. 1, Feb. 2000))

Appropriate correction is required.

Information Disclosure Statement

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3, 7, 39, and 41 are rejected under 35 U.S.C. 102(e) as being anticipated by Steil et al (US Pub. No. 2004/0193025 A1). The Steil reference discloses a device and method for detecting a chemical or biological agent and treating a person exposed to the agent in figures 1-39b, the device comprising a small and lightweight unit comprising at least one antidote 24, means for selecting the antidote 12, means for delivering 14 the antidote, means for communication between the selecting means and

Art Unit: 3767

the delivering means 12 as well, means for detecting and identifying 10. Wherein glucose is seen to be the biological or chemical agent and insulin the antidote.

Claims 1, 3-5, 7, 12, 39, 41-43, 45, 50-51, 53, & 58 are rejected under 35 U.S.C. 102(e) as being anticipated by Schetky et al (US Pub. 2004/0158232 A1). The Schetky reference discloses a device and method for detecting a chemical or biological agent and treating a person exposed to the agent in figures 1-8, the device comprising a small and lightweight unit comprising at least one antidote, see para [0018], means for selecting the antidote 36 also see figure 8, means for delivering 20A/20B the antidote, means for communication between the selecting means and the delivering means 36 as well see figure 8, means for detecting and identifying, seen as the blood glucose sensor or other sensors. Wherein glucose is seen to be the biological or chemical agent and insulin the antidote.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 6, 9, 11, 40, 44, 47-49, 52, 54-55, & 57 are rejected under 35 U.S.C. 103(a) as being obvious over Steil et al (US Pub. No. 2004/0193025 A1) or Schetky et al (US Pub. 2004/0158232 A1) as applied to claims 1 or 39 and further in view of

Art Unit: 3767

Sparks (US Patent No. 6932114B2). Now even though Steil or Schetky do not explicitly disclose a tube comprising a freestanding tube portion, means for vibrating the tube at a resonant frequency utilizing the Coriolis effect, means for sensing the movement of the freestanding tube, means for measuring the elapsed time, and means for stopping the flow attention is directed to Sparks. The Sparks reference teaches a fluid delivery system utilizing a freestanding tube in order to provide a system which delivers a precise amount of fluid and monitors property of the fluid. Therefore, it would be obvious to one of ordinary skill in the art at the time of the invention to modify the device of Schetky or Steil to incorporate the fluid delivery system of Sparks in order to provide a precise delivery and monitoring system to improve delivery accuracy.

With respect to claims 6, 44, 49, 52, 54-55, 57, wherein it would be obvious to one of ordinary skill in the art to also perform the detecting and identifying remote from the person such as in a sterile environment and through other methods such as urine or blood analysis out of the body.

With respect to claims 11 & 57, wherein the alert signal is not fully defined and is seen to be any signal sent to a location when the fluid commences, therefore the signal could be that of a controller telling the pump to commence which moves the fluid.

With respect to claim 47, wherein it would be obvious to one of ordinary skill in the art to insert the delivering means into the body, such as a needle or catheter for injection purposes, after the detecting and identifying has been performed in order to prevent the need to insert the patient with a needle or catheter.

The applied reference has a common inventor with the instant application.

Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(I)(1) and § 706.02(I)(2).

Claims 10 & 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Steil et al (US Pub. No. 2004/0193025 A1) or Schetky et al (US Pub. 2004/0158232 A1) as applied to claims 1 or 39 and further in view of Arzbaeher et al (US Pub. No. 2003/0191402A1). Now even though Steil or Schetky do not explicitly disclose sending a signal indicating the location of the person attention is directed to Arzbaeher. The Arzbaeher reference teaches the use of a medical device which can transmit an alarm and a signal indicating the location of the person when there is a detected problem of

the person's biological conditions. Therefore, it would be obvious to one of ordinary skill in the art to modify the device of Steil or Schetky to incorporate the teachings of Arzbaeher in order to provide a safety mechanism to the patient as well as to notify medical authorities of a problem so that help can be dispatched.

Allowable Subject Matter

Claims 8 & 46 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims and the specification objection were to be overcome.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin Huh whose telephone number is 571-272-8208. The examiner can normally be reached on M-F: 9:00 AM - 4:00 PM.

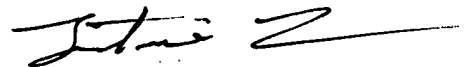
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on 571-272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3767

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

BHH

BHH



JUSTINE R. YU
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

12/22/06